

**CITY OF FRISCO  
FACILITIES UTILIZATION AGREEMENT  
FOR CITY HALL**

This Facilities Utilization Agreement (the "Agreement") by and between the City of Frisco, Texas, herein called "City" and the Frisco Community Theatre, herein called "Organization" and on the terms and conditions hereinafter set forth.

WHEREAS, Organization is a non-profit Organization headquartered in the City; and

WHEREAS, Organization previously leased space from the City in the former Community Center, prior to the Community Center being found to be in a state of repair that made it unsuitable for public gatherings; and

WHEREAS, the Organization wishes to conduct a theatrical performance for the purpose of raising funds to support theatrical performances within the City; and

WHEREAS, the City desires to observe how the Council Chambers function as a theater and review the feasibility of allowing such uses; and

NOW, THEREFORE, in consideration of the terms, conditions and covenants herein set forth, The parties agree as follows:

**I. PREMISES**

The City agrees to provide its City Council Chambers and lobby located on the first floor of the George A. Purefoy Municipal Complex, herein after referred to as the "Premises", for use by Organization for a theatrical performance..

**II. DATES AND HOURS**

The Premises shall be made available by City to Organization on Saturday, February 13, 2010 (the "Term"). Organization may enter the premises for purposes of setting up for the performances starting at 5:00 p.m. on February 13, 2010 and shall return the Premises, broom-clean and in the same condition in which it was found, by 11:00 p.m. on February 13, 2010. Performance will begin on or around 7:30 p.m. on February 13, 2010 and Organization shall vacate the premises, following the performance, by 11:00 p.m. With further approval by the City, the Organization shall also have the ability to hold a daytime Matinee on February 14, 2010, at hours to be mutually determined.

**III. FUNDRAISING, ASSIGNMENT AND FEES**

Organization shall not charge any fees for admission other than amounts being raised as part of the fundraiser the performance is meant to support. In addition, there may be requests for voluntary donations and Organization agrees that such donations are requested only for the Organization activity the performance is meant to support. Organization shall not assign this Agreement nor shall it rent out or allow any other individual or group to use any property of the City, including without limitation, the Premises.

Organization shall pay to City all fees required pursuant to the City of Frisco Operational Policies/ Section 5.1 Facilities and Appendixes, which are attached hereto as Exhibit "A" and made a part of this Agreement as if fully set forth herein. To the extent there is any conflict between this Agreement and Exhibit "A", this Agreement shall control. In addition, Organization agrees to pay costs at the rate of \$25.00 per hour incurred by the City as a result of this Agreement, which includes but is not limited to, staff support and utilities.

2.0	manhours for dais move
6.5	manhours for maintenance staff from 5p through 11:30p
<u>3.5</u>	manhours for custodial staff
12.0	manhours total.

Should the February 14, 2010 Matinee be held additional hours will be applied as necessary at the rate of \$25.00 per hour.

#### **IV. UNLAWFUL ACTIVITIES**

Organization shall not engage in any activities on the Premises which are in violation of any existing state, federal and/or local law and/or use the Premises in such a manner as to unreasonably interfere with other Premises' patrons engaged in lawful activities.

#### **V. PERMISSION FOR ORGANIZATION TO LEAVE PERSONAL PROPERTY ON THE PREMISES**

Organization may set-up the following items on the stage in the Council Chambers and will allow the items to remain on stage during the Term of this Agreement:

1. Two small tables or desks
2. Two chairs
3. Two table lamps
4. Small desk decorations

All items brought into the Premises shall be removed prior to the end of the Term. Organization agrees that City shall not be responsible for any property left unattended by Organization and Organization is bringing the property into the Premises at Organization's own risk. Organization further agrees that City shall not be responsible for any damage to the property or for any lost or stolen property brought onto the Premises pursuant to this Agreement.

#### **VI. INDEMNITY/RELEASE/WAIVER**

**ORGANIZATION HAS READ AND HEREBY AGREES TO THE INDEMNITY, WAIVER, RELEASE AND RESPONSIBILITY FOR PROPERTY PROVISIONS CONTAINED IN EXHIBIT "A" AND INCORPORATED AS IF FULLY SET FORTH HEREIN.**

#### **VII. INSURANCE**

Organization, at its own cost and expense, shall obtain and keep in force during the term of this Agreement public liability insurance as will for the purpose of protecting the Organization, its

officials, members, officers, spectators, participants, invitees, representatives, volunteers, agents and/or servants and City, its agents, officials, servants, representatives and employees and/or volunteers from any and all claims for damages to property and/or injury to persons (including death) which may arise from and/or out of Organization's use and/or occupation of the Premises, and any incident(s) related thereto. All insurance shall be issued by a company or companies of sound and adequate financial responsibility and authorized to do business in Texas.

Organization must procure and maintain the following minimum limits of insurance pursuant to this Article during the entire term of this Agreement:

<u>TYPE</u>	<u>MINIUMUM LIMIT</u>
Comprehensive General	\$1,000,000-Combined Single Limit Coverage
Public Liability	\$1,000,000-On a Per Occurrence Basis, and Medical Payment Coverage

All insurance policies shall be subject to the examination and approval of the Office of the City Manager, for their adequacy as to content, protection and named insurance company. Organization shall furnish to City copies of such Certificates of Insurance prior to the commencement of any activities by Organization at the Premises. The certificates shall contain the following express obligations:

*"This is to certify that the policies of insurance described herein have been issued for whom this certificate is executed and are in force at this time. In the event of cancellation or material change in a policy affecting the certificate holder, thirty (30) days prior written notice shall be given to the City of Frisco, Texas."*

Insurance required by this Agreement for the City as additional insured or an additional named insured shall be primary insurance and not contributing with any other insurance available to City under any third party liability policy.

Organization further agrees that with respect to the above required insurance, the City shall:

- A. be named as an additional insured or an insured, as its interest may appear; and
- B. be provided with a waiver of subrogation, in its favor.

Organization agrees to procure insurance to cover accident and/or medical expenses for all players. This insurance benefit will be designed to pay the excess of any expenses payable by other valid and collectible insurance to an insured person for an injury caused by a covered accident.

Organization understands and agrees that it has the sole responsibility to provide the insurance as set forth herein and that failure to timely comply with the requirements under this Article shall be cause for termination of this Agreement.

## **VIII. DEFAULT/TERMINATION**

Failure of Organization to comply with any of the terms and/or conditions of this Agreement, including the exhibits attached hereto, could result in Organization losing any and all present and/or future privilege of using any facility and/or premises of City.

#### **IX. JOINT EFFORTS/REPRESENTATION**

This Agreement was prepared by the joint efforts of the parties to the Agreement. Each signatory represents that his Agreement has been read by the party for which this Agreement is executed and that such party has had an opportunity to confer with its counsel.

#### **X. NON-PROFIT STATUS/HEADQUARTERS**

Organization represents that it is a non-profit Organization, which is not conducted or operated for profit, and no part of any funds flowing to the Organization inures to the benefit of any member or individual. Organization further represents that it is headquartered in City and has a City mailing address.

#### **XI. MISCELLANEOUS PROVISIONS**

1. NOTICE. Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing same in the United States Mail, addressed to the party to be notified, postage pre-paid and registered or certified with return receipt requested, or by delivering the same in person to such party via a hand-delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notification, the addresses of the parties shall be as follows:

If to ORGANIZATION, to:

Frisco Community Theatre  
P.O. Box 1221  
Frisco, TX 75034  
Attention: Howard L. Korn  
President

If to CITY, to:

Henry J. Hill, Deputy City Manager  
City of Frisco  
6101 Frisco Square Blvd.  
Frisco, Texas 75034

2. ENTIRE AGREEMENT. This Agreement contains the entire agreement of the parties with respect to the matters contained herein and may not be modified except by the mutual written agreement of the parties hereto.
3. VENUE. This Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Collin County, Texas.
4. SEVERABILITY. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this

Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

5. CONSIDERATION. This Agreement is executed by the parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.
6. COUNTERPARTS. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed as original for all purposes.
7. AUTHORITY TO EXECUTE. The individuals executing this Agreement on behalf of the respective parties below represent to each other and the others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his/her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Agreement and that each individual affixing his/her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.
8. BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns.
9. SOVEREIGN IMMUNITY. The parties agree that City has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.
10. MISCELLANEOUS DRAFTING PROVISIONS. This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumptions or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.

This Agreement is made and entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

**CITY OF FRISCO**

\_\_\_\_\_  
Jenny Page, City Secretary

By: \_\_\_\_\_  
Maher Maso, Mayor

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Abernathy, Roeder, Boyd & Joplin, P.C.  
City Attorneys

**Frisco Community Theatre**

By: \_\_\_\_\_  
Howard L. Korn, President

## **EXHIBIT “A”**

See Attached City Hall Use Policy